

ORIGINAL

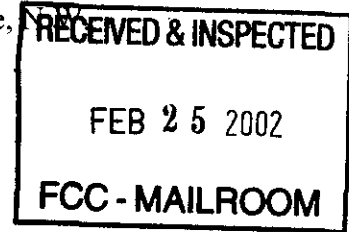
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EX PARTE OR LATE FILED

14 February, 2002

Ken Ferree: Cable Service Bureau
FCC
445 12th St. S. W.
Washington, DC 20554

Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580



RE: EchoStar and DirecTV Merger
RE: EchoStar's Monopolist Practice

Dear Sir or Madam:

Recently, a FCC request was asked on how EchoStar and DirecTV views *competition with cable and within the satellite TV business*, and I would like to comment on how I perceive EchoStar to be engaged in predatory practices for past two years for eliminating consumer C-Band Industry; once consumer C-Band Industry falls, these consumers would have no choice but to switch to EchoStar's or DirecTV's DBS. Since I believe both FTC and FCC have a regulatory obligation to amend monopolist's practices, and to encourage competition, I have directed this letter to both agencies.

In order to facilitate a basic understanding, a brief overview of consumer C-Band Industry is given along with a short history of perceived EchoStar's predatory practices to eliminate consumer C-Band Industry; although DirecTV has played a smaller role.

Consumer C-Band Industry had its beginnings around early 1980s, and these consumers buy large diameter dishes up to 12' in diameter for receiving mainly satellite based "cable channels." In C-Band Industry, there are/were independent equipment suppliers, independent program resellers, and independent service suppliers to install and maintain equipment. To contrast this with EchoStar's and DirecTV's model to consumer C-Band, both DBS companies in effect control all three aspects mentioned. When explored, there are two different business models when you compare C-Band to DBS, but to keep this short, the main point is C-Band Industry represents independent concerns, whereas DBS industry consolidated these aspects under their "total" control.

Around early winter of 2000, EchoStar entered into a contract with TV Guide, who owns several C-Band program resellers, called Superstar/Netlink/TurnerVision now. In C-Band Industry, this was the largest reseller to consumers; below is a press release:

"Close to 1.4 million subscribers for the big dish business operated by TV Guide will go to EchoStar's DISH Network in a deal announced Tuesday. Under the conversion process, EchoStar will compensate Superstar/Netlink on a per-subscriber basis. According to analysts, that could amount to \$700 per-subscriber for EchoStar."

The Superstar/Netlink Group also will receive \$10 million for making DISH Network the exclusive DBS system it markets. According to analysts, EchoStar said it believes it can convert about 500,000 C-Band subscribers to DBS over a one to two year period. In addition to the Superstar deal, TV Guide's TV Games Network signed a 10-year affiliation agreement with EchoStar."

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From this point forward, starting around January 2001, C-Band consumers who were a customer of Superstar/Netlink/TurnerVision received:

- (1) Numerous mailings offering a “Free Install, Free EchoStar Dish,” and \$100.00 off first year’s programming (which EchoStar’s \$100.00 off first year programming cost is below the cost of similar priced C-Band programming), and
- (2) Repetitive EchoStar sales pitch when these consumers were calling in to renew their C-Band programming. You have to call-in to renew your programming, and you were given EchoStar’s sales pitch listed above. Analogous to going into a Chevrolet dealership, and the salesman trying to sell you a new Ford; but here, persuasion tactics were used before you could renew your programming. Hence, TV Guide’s companies (Netlink/Superstar/TurnerVision) focus was to convert C-Band consumers to EchoStar’s product, and not the objective to renew C-Band programming.

I have included a copy of one mailing for your inspection, but here it is clear this mailing was slanted towards sales of EchoStar’s DBS system; in the beginning, these mailings were focused entirely upon EchoStar. I will add that in the past two years, about 400,000 plus C-Band consumers have left C-Band subscription services, and now, about 800,000 C-Band consumers still exist. Only EchoStar and TV Guide know for sure how many C-Band consumers converted through these below cost sales tactics. It is self-evident, once a certain numerical threshold is reached, consumer C-Band will perish and/or programming costs will rise higher than DBS rates, which effective means at some point, consumer C-Band will fall. This action by EchoStar means those who want satellite programming will be forced in the future to buy from DirecTV or EchoStar.

Further, unless you own a C-Band system, and scan different satellites and channels, you would not be aware that TV Guide spent about a million dollars transmitting EchoStar’s sales pitch in a program call “C-Band Central” 24 hours/day for about a year; nor would you be aware that EchoStar transmitted via satellite infomercials in the past two years offering this same below cost sales pitches. I will further note that if these tapes could be reviewed, one may find less than honest pitches and pseudo claims.

Moreover, when HBO got out of the C-Band programming services, they sold their customer database to TV Guide. HBO’s customer database had the names and addresses of all C-Band consumers who had subscribed to HBO through program sellers like NPS (National Programming Services), Netlink, etc. TV Guide now uses these names they never had before, and have made sale pitches. In other words, TV Guide is “driven” to acquire these “non-customers” in order to pitch programming sales or EchoStar’s pitch.

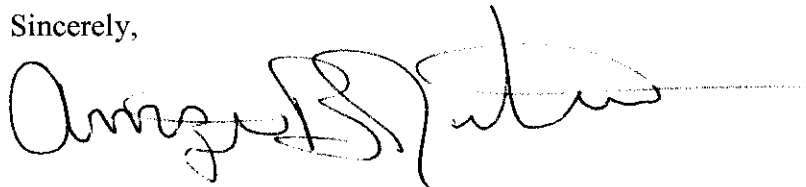
Although further details could be added, from others also, the main points are:

- (1) EchoStar via TV Guide contract has attempted to eliminate consumer C-Band Industry via offering to C-Band consumers a complete package deal for equipment and programming at a lower cost than what most retail consumers pay,
- (2) EchoStar, from its prior experiences with C-Band Industry, which is where its roots are from manufacturing satellite C-Band receivers, would know full well that when the subscription base reaches some numerical threshold, the C-Band Industry falls.
- (3) Programming costs in C-Band Industry have been rising via TV Guide's program-reseller companies (Netlink, Superstar, & TurnerVision); and C-Band consumers are reminded occasionally this is due to decrease in consumer C-Band subscriptions.
- (4) EchoStar and TV Guide have both conspired to eliminate C-Band Industry.
- (5) DirecTV has put up infomercials after seeing what EchoStar was doing, and latter, I think they acquired a contract with the other program reseller, NPS; but as I recall, their infomercials indicated higher costs for converting over to their system.

Thus, with respect to how I view *competition within the satellite TV business*, EchoStar has been predatory towards C-Band Industry when it should know that C-Band Industry can collapse when a certain numerical threshold is reached; and to accomplish its goal, it has been estimated they are paying \$700.00 per subscriber converted to their system, and they have offered to C-Band consumers, below retail pricing as inducement.

If this matter should be heard and considered, and if actions are taken, I do have further comments concerning a equitable resolution to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. B. Jordan', with a long horizontal line extending to the right.

A. B. Jordan
Rt. 3 Box 171
Beloit, Kansas
67420

Why are MILLIONS of Customers Choosing DISH Network?

It's quite simple. People all across America want to make the most of their satellite TV viewing experience and have come to realize that DISH Network offers...

MORE PROGRAMMING FOR LESS MONEY.

Turn on great digital channels for as little as \$142 for the first year with a prepaid annual subscription! DISH Network offers you a variety of package options for a great price. You can even receive **more premium movie channels, more pay-per-view and more kids' channels** than what's available on your big dish system. Plus, you may be eligible to receive your local news, weather and sports!

STATE-OF-THE-ART TECHNOLOGY.

With your free small DISH Network system, you get all your programming on one satellite and that means **fewer tuning problems, faster channel changes and no more big dish repairs.** This easy-to-use system allows you to see what's on TV with the **FREE Interactive Program Guide** and order exciting Pay-Per-View movies with the push of a button on your remote. Plus, you will absolutely love the **stunning picture and CD-quality sound** coming out of your marvelous little dish!

AN OUTSTANDING VALUE!

Where else can you get a **free small dish, free basic professional installation**, and the chance to take **\$100 off a first-year, prepaid annual subscription** to DISH Network? Superstar, Netlink and Turner Vision's **unbeatable small dish offer** allows you to bring new digital satellite TV technology into your home while **saving you a significant amount of money.**

WHAT'S HOLDING YOU BACK FROM GETTING NEW DIGITAL SATELLITE TV?

Nearly a million of our big dish customers have accepted our **free DISH Network offer.** So, what are you waiting for? Pick up the phone right now and ask for your **brand-new digital satellite TV system.** Just think, you could be watching exciting digital channels next week!

CALL 1-800-954-5579 TODAY TO RECEIVE YOUR FREE DISH NETWORK SYSTEM!



AMERICA'S TOP 50 ONLY \$142 A YEAR

FIRST-YEAR, PREPAID ANNUAL SUBSCRIPTION.

A&E
AMERICA'S COLLECTIBLES NETWORK
ANGEL ONE
BEAUTY & FASHION CHANNEL
CARTOON NETWORK
CMT
CNBC
CNN
COMEDY CENTRAL
COURT TV
C-SPAN
C-SPAN2
DISCOVERY CHANNEL
DISNEY CHANNEL (2)
E! ENTERTAINMENT
ESPN
ESPN2
ESPNEWS
EWTN
FOOD NETWORK
HEADLINE NEWS
HGTV
THE HISTORY CHANNEL
HOME SHOPPING NETWORK
I SHOP
LIFETIME
MTV
MTV2
NASA
NICKELODEON/NICK AT NITE (2)
QVC
SCI-FI CHANNEL
SHOP AT HOME
SHOPNBC
TBN
TBS
TLC
TNN
TNT
TRAVEL CHANNEL
TVG
TV LAND
USA NETWORK
VH1
THE WEATHER CHANNEL
PLUS, 12 PUBLIC INTEREST CHANNELS!

*Plan and dish antenna vary for Hawaiian residents. The DISH Network offer is available to current or former Superstar, Netlink and Turner Vision C-Brand subscribers receiving C-Brand programming services when accepting this offer that reside in Alaska, Puerto Rico and the U.S. Virgin Islands, and is not transferable. Previous DISH Network subscribers are not eligible. (Dish is sold separately.) Line 1-877-685-0713. Free digital satellite TV system subject to change based on availability and subject to purchase of a DISH Network programming package. Only one line system per household. All services are non-transferable for the period indicated. \$100 discount only applies to the purchase of a first-year, prepaid annual subscription to America's Top 50, America's Top 100, DISH Local or DISH Local Plus programming package (America's Top 100 for Hawaiian residents). Basic Professional Installation includes installation of one DISH1500 antenna, hook-up of one receiver to one TV and equipment testing. Actual dish antenna may vary depending upon location in Hawaii. Other installation restrictions apply. All prices, packages and programming are subject to change without notice. Local time zone sales taxes may apply. Programming is available for single-family dwellings located in the continental United States. All DISH Network programming and any other services that are provided are subject to the terms of the Residential Customer Agreement, which is available upon request. Local TV channels are offered only in specified areas and may be provided through an outdoor antenna or a local dish antenna. Other broadcast service quality may vary based upon location. Local Broadcast Networks by satellite are only available to customers who reside in the specified local Designated Market Area (DMA). (Local Broadcast Networks' packages by satellite are only available for private home viewing and in limited areas. In homes that are located outside a Grade A or B designated area. Additional receiver must be activated in conjunction with the primary receiver, and are subject to a \$4.99 per month programming fee per receiver. All receivers must be connected to a phone line. ESPN and ESPN2 programming subject to change and broadcast restrictions, and are licensed separately for residential and commercial use. FOX Sports Network programming is subject to broadcast restrictions, and is licensed for residential use only. Regional Sports Networks and Turner SportsNet are available in all areas. All service marks and trademarks belong to their respective owners. Monthly terms available. Some restrictions may apply. All rights reserved.



Not Quite Ready For a Small Dish?

If you'd rather postpone getting a small dish, that's perfectly fine. We also bring you the best in C-Band – unbeatable prices, the best C-Band packages and terrific customer service. Superstar, Netlink and Turner Vision are committed to serving all your satellite needs.

Package	Channels	Annual Price
Starter	37	159.99
SuperView	54	249.99
OneStop STARZ Encore (5)	55	319.99
SuperPak HBO (5) & Cinemax (3)	56	349.99
SuperPak Plus HBO (5) & Cinemax (3)	64	379.99
SuperView/Premiums HBO (5) & Cinemax (3) OR Showtime (2), TMC (2), FLX & Sundance.	up to 62	409.99
Expanded* Choice of one premium: HBO (5); Cinemax (3); Showtime (2); TMC (2) or Disney (2). Includes C-Band Guide.	up to 63	439.99
Expanded Plus* HBO (5) & Cinemax (3) OR Showtime (2), TMC (2), FLX & Sundance. Includes C-Band Guide.	up to 66	529.99
MegaView* HBO (5), Cinemax (3), STARZ Encore (5), Showtime (2), TMC (2), FLX & Sundance. Includes C-Band Guide.	72	609.99
Absolute* HBO (5), Cinemax (3), STARZ Encore (5), Showtime (2), TMC (2), FLX, Sundance & Disney (2). Includes C-Band Guide.	74	699.99

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"My Mom Just Got the Best Satellite TV Offer in America!"

"Dad would turn over in his grave if he knew Mom got a little pizza dish. But it's easier for her to use, she gets more channels, and I don't have to worry about finding parts to fix her big dish. More importantly, Mom's happy and I get to spend more time with her!" - **J.D. Wilson**

"I could just kick myself for not getting a free small dish sooner! When you live on a fixed income, it helps to pinch pennies any way you can. And this free small dish offer really saved me a lot of money!" - **Mama Wilson**



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